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SENATE BILL 157

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

INTRODUCED BY

Cisco McSorley

FOR THE CORRECTIONS OVERSIGHT AND JUSTICE COMMITTEE

AN ACT

RELATING TO LAW ENFORCEMENT; PROVIDING FOR THE DNA IDENTIFICATION OF MISSING PERSONS, UNIDENTIFIED PERSONS AND UNIDENTIFIED HUMAN REMAINS; AMENDING AND ENACTING SECTIONS OF THE DNA IDENTIFICATION ACT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. A new section of the DNA Identification Act is enacted to read:

" [NEW MATERIAL] EXPUNGEMENT OF SAMPLES AND DNA RECORDS. --

A. A person may request expungement of his sample and DNA records from the missing persons DNA identification system.

B. The administrative center shall expunge a person's sample and DNA records from the missing persons DNA identification system when the person provides the

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1 administrative center with the following materials:

2 (1) a written request for expungement of his
3 sample and DNA records; and

4 (2) if applicable, a certified copy of a court
5 order that overturns the original search warrant or court order
6 that led to the inclusion of his sample and DNA records in the
7 missing persons DNA identification system.

8 C. When a person's sample and DNA records are
9 expunged from the missing persons DNA identification system,
10 the head of the administrative center shall ensure that the
11 person's sample and DNA records are expunged from CODIS. "

12 Section 2. A new section of the DNA Identification Act is
13 enacted to read:

14 "[NEW MATERIAL] REIMBURSEMENT OF COSTS. --

15 A. When the DNA testing of samples listed in
16 Section 29-16-6 NMSA 1978 is required, the administrative
17 center shall be reimbursed for the costs of the sample
18 collection and DNA testing:

19 (1) of unidentified persons by the
20 investigating law enforcement agency;

21 (2) of unidentified human remains by the state
22 medical investigator or by the investigating law enforcement
23 agency; and

24 (3) for relatives of, or known reference
25 samples from, a missing person by the relatives of the missing

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1 person or by the investigating law enforcement agency.

2 B. Reimbursements shall be deposited in the fund."

3 Section 3. A new section of the DNA Identification Act is
4 enacted to read:

5 "[NEW MATERIAL] DNA SEARCHES. --

6 A. Searches of samples collected pursuant to the
7 DNA Identification Act, for purposes of the missing persons DNA
8 identification system, shall be limited to searches against DNA
9 indexes consisting of:

10 (1) unidentified persons;

11 (2) unidentified human remains;

12 (3) relatives of, or known reference samples
13 from, missing persons; and

14 (4) covered offenders as defined by the DNA
15 Identification Act and maintained by the DNA identification
16 system.

17 B. Searches of samples collected from unidentified
18 persons or relatives of missing persons pursuant to the DNA
19 Identification Act shall not be performed against DNA indexes
20 consisting of evidentiary samples resulting from criminal
21 investigations."

22 Section 4. Section 29-16-1 NMSA 1978 (being Laws 1997,
23 Chapter 105, Section 1) is amended to read:

24 "29-16-1. SHORT TITLE. -- [~~This act~~] Chapter 29, Article 16
25 NMSA 1978 may be cited as the "DNA Identification Act". "

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1 Section 5. Section 29-16-2 NMSA 1978 (being Laws 1997,
2 Chapter 105, Section 2) is amended to read:

3 "29-16-2. PURPOSE OF ACT. --The purpose of the DNA
4 Identification Act is to:

5 A. establish a DNA identification system for
6 covered offenders; [~~and~~]

7 B. facilitate the use of DNA records by local,
8 state and federal law enforcement agencies in the
9 identification, detection or exclusion of persons in connection
10 with criminal investigations;

11 C. establish a missing persons DNA identification
12 system consisting of the following DNA indexes:

13 (1) unidentified persons;

14 (2) unidentified human remains; and

15 (3) relatives of, or known reference samples
16 from, missing persons; and

17 D. facilitate the use of DNA records by local,
18 state and federal law enforcement agencies and the state
19 medical investigator in the identification and location of
20 missing and unidentified persons or human remains. "

21 Section 6. Section 29-16-3 NMSA 1978 (being Laws 1997,
22 Chapter 105, Section 3) is amended to read:

23 "29-16-3. DEFINITIONS. --As used in the DNA Identification
24 Act:

25 A. "administrative center" means the law

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1 enforcement agency or unit that administers and operates the
2 DNA identification system;

3 B. "DNA oversight committee" means the DNA
4 identification system oversight committee;

5 C. "CODIS" means the federal bureau of
6 investigation's national DNA index system for storage and
7 exchange of DNA records submitted by forensic DNA laboratories;

8 D. "covered offender" means any person convicted of
9 a felony offense as an adult under the Criminal Code, the Motor
10 Vehicle Code or the constitution of New Mexico or convicted as
11 an adult pursuant to youthful offender or serious youthful
12 offender proceedings under the Children's Code;

13 E. "department" means the department of public
14 safety;

15 F. "DNA" means deoxyribonucleic acid as the basis
16 of human heredity;

17 G. "DNA identification system" means the DNA
18 identification system established pursuant to the DNA
19 Identification Act;

20 H. "DNA records" means the results of DNA testing
21 and related information;

22 I. "DNA testing" means a forensic DNA analysis that
23 includes restriction fragment length polymorphism, polymerase
24 chain reaction or other valid methods of DNA typing performed
25 to obtain identification characteristics of samples;

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1 J. "fund" means the DNA identification system fund;
2 [~~and~~]

3 K. "missing persons DNA identification system"
4 means the missing persons DNA identification system established
5 by the DNA Identification Act; and

6 [~~K-~~] L. "sample" means a sample of biological
7 material sufficient for DNA testing."

8 Section 7. Section 29-16-4 NMSA 1978 (being Laws 1997,
9 Chapter 105, Section 4) is amended to read:

10 "29-16-4. ADMINISTRATIVE CENTER--POWERS AND DUTIES--
11 TRANSFER TO OTHER LAW ENFORCEMENT AGENCY.--

12 A. The administrative center shall be an
13 appropriate unit of the department or such other qualified New
14 Mexico law enforcement agency as the secretary of public safety
15 may designate in accordance with this section.

16 B. The administrative center shall:

17 (1) establish and administer the DNA
18 identification system. The DNA identification system shall
19 provide for collection, storage, DNA testing, maintenance and
20 comparison of samples and DNA records for forensic and
21 humanitarian purposes. [~~Such~~] Those purposes shall include
22 generation of investigative leads, [~~and~~] statistical analysis
23 of DNA profiles and identification of missing persons and
24 unidentified human remains. Procedures used for DNA testing
25 shall be compatible with the procedures the federal bureau of

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1 investigation has specified, including comparable test
2 procedures, laboratory equipment, supplies and computer
3 software. Procedures used shall meet or exceed the provisions
4 of the federal DNA Identification Act of 1994 regarding minimum
5 standards for state participation in CODIS, including minimum
6 standards for the acceptance, security and dissemination of DNA
7 records;

8 (2) coordinate sample collection activities;

9 (3) perform or contract for DNA testing;

10 (4) serve as a repository for samples and DNA
11 records;

12 (5) act as liaison with the federal bureau of
13 investigation for purposes of CODIS; ~~and~~

14 (6) adopt ~~regulations~~ rules and procedures
15 governing:

16 (a) sample collection;

17 (b) DNA testing;

18 (c) the DNA identification system and
19 DNA records; and

20 (d) the acceptance, security and
21 dissemination of DNA records;

22 (7) be reimbursed for, pursuant to the DNA
23 Identification Act, the costs of sample collection and DNA
24 testing of samples taken for the purposes of the identification
25 of missing persons and unidentified human remains; and

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1 (8) establish and administer the missing
2 persons DNA identification system as a part of the DNA
3 identification system.

4 C. The secretary of public safety may designate,
5 pursuant to a joint powers agreement, the crime laboratory of
6 the police department for the largest municipality in a class A
7 county having a population of more than two hundred fifty
8 thousand at the most recent federal decennial census to act as
9 the administrative center.

10 D. The secretary of public safety may designate,
11 pursuant to a joint powers agreement, any other law enforcement
12 agency to act as administrative center upon recommendation of
13 five voting members of the DNA advisory committee. "

14 Section 8. Section 29-16-5 NMSA 1978 (being Laws 1997,
15 Chapter 105, Section 5) is amended to read:

16 "29-16-5. DNA OVERSIGHT COMMITTEE--CREATED--POWERS AND
17 DUTIES.--

18 A. The "DNA identification system oversight
19 committee" is created. The DNA oversight committee shall be
20 composed of nine voting members as follows:

21 (1) a scientific representative from the
22 department crime laboratory appointed by the secretary of
23 public safety;

24 (2) a scientific representative from the crime
25 laboratory of the police department for the largest

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1 municipality in a class A county having a population of more
2 than two hundred fifty thousand at the most recent federal
3 decennial census;

4 (3) the secretary of corrections or his
5 designated representative;

6 (4) the state medical investigator or his
7 designated representative;

8 (5) the attorney general or his designated
9 representative;

10 (6) the president of the district [~~attorney's~~]
11 attorneys association or his designated representative;

12 (7) the chief public defender or his
13 designated representative; [~~and~~]

14 (8) the president of the New Mexico criminal
15 defense lawyers association or his designated representative;
16 and

17 (9) the head of the administrative center or
18 his designated representative.

19 B. The DNA oversight committee shall adopt rules
20 [~~regulations~~] and procedures regarding the administration and
21 operation of the DNA identification system.

22 C. The administrative center shall review and make
23 recommendations to the DNA oversight committee regarding rules
24 [~~regulations~~] and procedures for the administration and
25 operation of the DNA identification system.

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1 D. The DNA oversight committee shall oversee the
2 establishment and administration of the missing persons DNA
3 identification system as part of the DNA identification system.

4 E. The DNA oversight committee shall adopt rules
5 and procedures regarding the administration and operation of
6 the missing persons DNA identification system as part of the
7 DNA identification system."

8 Section 9. Section 29-16-6 NMSA 1978 (being Laws 1997,
9 Chapter 105, Section 6) is amended to read:

10 "29-16-6. [~~COVERED OFFENDERS SUBJECT TO~~] COLLECTION OF
11 SAMPLES. -- [~~Each~~]

12 A. A covered offender shall provide one or more
13 samples to the administrative center, as follows:

14 [~~A.-~~] (1) a covered [offenders] offender
15 convicted on or after [the effective date of the DNA
16 Identification Act] July 1, 1997 shall provide a sample [at any
17 time] immediately upon request of the corrections department so
18 long as the request is made before release from any
19 correctional facility or, if the covered offender is not
20 sentenced to incarceration, before the end of any period of
21 probation or other supervised release;

22 [~~B.-~~] (2) a covered [offenders] offender
23 incarcerated on [the effective date of the DNA Identification
24 Act] or after July 1, 1997 shall provide a sample [at any time]
25 immediately upon request of the corrections department so long

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1 as the request is made before release from any correctional
2 facility; and

3 ~~[C.]~~ (3) a covered [offenders] offender on
4 probation or other supervised release on ~~[the effective date of~~
5 ~~the DNA Identification Act]~~ or after July 1, 1997 shall provide
6 a sample immediately upon request of the corrections department
7 so long as the request is made before the end of any period of
8 probation or other supervised release.

9 B. Samples from unidentified persons or relatives
10 of a missing person shall be provided to the administrative
11 center, as follows:

12 (1) upon the completion of a permission to
13 search form authorizing the collection of a DNA sample;

14 (2) upon the receipt of a properly executed
15 search warrant; or

16 (3) upon the issuance of a court order.

17 C. Samples from unidentified human remains shall be
18 provided by the state medical investigator.

19 D. Samples of known reference materials from
20 missing persons shall be provided by the investigating law
21 enforcement agency."

22 Section 10. Section 29-16-7 NMSA 1978 (being Laws 1997,
23 Chapter 105, Section 7) is amended to read:

24 "29-16-7. PROCEDURES FOR COLLECTION OF SAMPLES. --

25 A. The collection of samples pursuant to the

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1 provisions of Section [~~6 of the DNA Identification Act~~] 29-16-6
2 NMSA 1978 shall be conducted in a medically approved manner in
3 accordance with rules [~~regulations~~] and procedures adopted by
4 the DNA oversight committee.

5 B. [~~All persons~~] A person who [~~collect~~] collects
6 samples shall be trained in procedures that meet the
7 requirements and standards specified in Subsection A of this
8 section.

9 C. [~~All persons~~] A person authorized to collect
10 samples and [~~their employers~~] his employer shall be immune from
11 liability in any civil or criminal action with regard to the
12 collection of samples, if the collection is performed without
13 negligence. This subsection shall not be deemed to create any
14 additional liability or waive any immunity of public employees
15 under the Tort Claims Act.

16 D. Samples shall be stored in accordance with rules
17 [~~regulations~~] and procedures adopted by the administrative
18 center.

19 E. DNA testing shall be performed by the
20 administrative center or a contract facility it may designate.

21 F. DNA records and samples shall be securely
22 classified and stored [~~at~~] by the administrative center. "

23 Section 11. Section 29-16-8 NMSA 1978 (being Laws 1997,
24 Chapter 105, Section 8) is amended to read:

25 "29-16-8. CONFIDENTIALITY--DISCLOSURE AND DISSEMINATION

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1 OF DNA RECORDS. --

2 A. DNA records and samples are confidential and
3 shall not be disclosed except as authorized in the DNA
4 Identification Act pursuant to the rules and regulations
5 developed and adopted by the DNA oversight committee.

6 B. The administrative center shall make DNA records
7 available for identification, comparison and investigative
8 purposes to local, state and federal law enforcement agencies
9 and the state medical investigator pursuant to the rules [~~and~~
10 ~~regulations~~] developed and adopted by the DNA oversight
11 committee. The administrative center may disseminate
12 statistical or research information derived from samples and
13 DNA testing if all personal identification is removed pursuant
14 to the rules [~~and regulations~~] developed and adopted by the DNA
15 oversight committee. "

16 Section 12. EFFECTIVE DATE. --The effective date of the
17 provisions of this act is July 1, 2003.